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Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage

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ABSTRACT In this article, I draw on ethnography in the particular zone of engagement between anthropologists, on the one hand, and human rights lawyers who are skeptical of the human rights regime, on the other hand. I argue that many of the problems anthropologists encounter with the appropriation and marginalization of anthropology's analytical tools can be understood in terms of the legal character of human rights. In particular, discursive engagement between anthropology and human rights is animated by the pervasive instrumentalism of legal knowledge. I contend that both anthropologists who seek to describe the culture of human rights and lawyers who critically engage the human rights regime share a common problem—that of the "iron cage" of legal instrumentalism. I conclude that an ethnographic method reconfigured as a matter of what I term *circling back*—as opposed to cultural description—offers a respite from the hegemony of legal instrumentalism. [Keywords: human rights, law, ethnographic method, instrumentalism, knowledge]

IN A RECENT ARTICLE about anthropological debates about human rights and cultural relativism published in *Human Rights Quarterly,* the critical legal scholar and human rights specialist Karen Engle argues that anthropological debates about cultural relativism hide a more fundamental shift (Engle 2001). What has changed from the American Anthropological Association's (AAA) 1947 statement on human rights (AAA 1947) to its 1999 revision (AAA 1999), and what is salient about ubiquitous assertions by anthropologists that the discipline has changed its position on cultural relativism, Engle argues, is not anthropologists' view of culture but of law. Whereas in 1947 Melville Herskovitz and his colleagues were highly ambivalent about law and about the human rights regime, now anthropologists "have embraced human rights rhetoric" (Engle 2001:537).

Engle's argument prompted an article-length response from the anthropologist of law and human rights institutions Sally Engle Merry (2003).[1] Merry argues that Engle and other critical lawyers fundamentally misunderstand what anthropologists mean by culture and, hence, by cultural relativism. Lawyers fail to see that anthropologists have moved beyond a static and bounded conception of culture as "values" to a much more dynamic, hybridic, fluid culture concept (Merry 2003:67). From this point of view, culture need not be the enemy of human rights, Merry argues. Merry's argument taps into a broader concern often heard within the discipline of anthropology—that anthropological concepts are misunderstood and misappropriated by the human rights regime and hence that anthropology and anthropologists are too often unduly ignored in processes that could benefit from anthropological expertise.

On the surface, at least, Merry's critique seems somewhat out of step with the thrust of Engle's argument. Engle makes clear that most anthropologists understand "that cultures are not static and monolithic" (2001:556), and she emphasizes that she shares anthropologists' antiessentialist view of culture. In fact, she takes particular anthropologists to task for momentary lapses into essentialism: "By lumping together 'gender, class and ethnicity,' or 'women, "minorities" and indigenous peoples,' [anthropologists Terence Turner and Carol Nagengast] fail to recognize the potential conflicts among these groups" (2001:558). She also critiques the 1999 AAA declaration for failing to be explicit enough about the fluid and antiessential nature of culture: "While the Declaration specifically states that 'human rights is not a static concept,' it does not say the same about culture" (2001:558). Engle also does not claim that anthropologists are complete relativists. She argues, rather, that contemporary anthropologists unfairly accuse midcentury anthropology of relativism when, in fact, midcentury anthropologists—as well as the 1947 AAA statement on human rights—took a much more politically engaged view than this caricature would suggest (Engle 2001:554).

Yet Merry's critique usefully draws attention to some odd points of friction, of arguments working at cross-purposes, as between Engle's account and that of much

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anthropological writing. Engle asserts, for example, that "the [AAA] statement calls for tolerance of difference, or cultural relativism" (Engle 2001:539). Most anthropologists would assert that tolerance for cultural difference is not at all the same thing as cultural relativism. What is a salient difference from one point of view in this conversation is not from another.

Merry also adds a second important point: International human rights law, too, has a culture, she argues. The point is to remind Engle, in a relativizing spirit, that her own knowledge practices, as exemplified in this article are specific, particular, and available for study as ethnographic objects. Here, Merry builds on a growing body of work in the anthropology of human rights in which she has been a pioneer. As Mark Goodale explains in his introduction to this "In Focus" collection, the last ten years have seen many anthropologists turn from treating human rights doctrines, actors, and institutions as instruments to be used (e.g., as a tool of advocacy on behalf of indigenous peoples) to treating them as subjects of ethnographic research, on par with other ethnographic subjects (e.g., Merry this issue, 2005; Riles 2000; Wilson 1997, 2001).

In this article, I want to take up Merry's suggestion that international human rights knowledge of the specific kind exemplified by Engle's intervention is a "culture," in the specific sense of a potential subject of ethnographic study. What interests me about the conversation between Engle and Merry is its very condition of possibility. Engle's analysis is representative of a growing body of scholarly and activist projects by lawyers involved in the administration and academic analysis of human rights who nevertheless perceive themselves as skeptics of the human rights regime. These lawyers look to anthropological accounts as a source of theoretical insight and, as we will see, of methodological escape from the constraints of human rights knowledge itself. These lawyers find common ground with many contemporary anthropological accounts. They assert that rather than "solve" the cultural relativism problem in human rights, one should ask what it hides, what it reveals, and who has an interest in framing the principal conversation between the First and Third Worlds in the vocabulary of "rights versus culture"—as opposed, for example, to the vocabulary of critiques of neoliberal economic models (e.g., Rajagopal 2003:166). One refrain in this movement is skepticism about invocations of both culture and of victimhood as well as attention to the political consequences of labeling some persons human rights "victims." For example, a number of feminist critical human rights lawyers argue—in ways evocative of feminist anthropological arguments about human rights, including Merry's own—that treating women as victims under international law encourages non-Euro-American feminists to slot themselves into the role of native subject in their engagements with international legal institutions (Kapur 2002).

Indeed, what is remarkable about this conversation between Merry and Engle is how much is agreed on by the two sides at the level of theory (cf. Riles 2002). Both Merry and Engle agree that culture should not be considered a static, reified thing. Both also agree that for human rights law, culture is "the other" (Merry 2003:60). Both agree that an emphasis on culture as the source of women's oppression has the effect of masking other sources and causes of oppression (Merry 2003:63; see Engle 1992a, 1992b).

But Merry's assertion that human rights law also is a culture implicitly points to what is disturbing to an anthropological reader about Engle's article: Engle goes beyond shared views of culture, power, and law to take an interest in anthropology's methods of cultural analysis and, more than this, to appropriate and apply these back onto the study of anthropological discourse and methodology itself. What is significant about Engle's analysis of anthropologists' changing engagement with the human rights regime, aside from the argument itself, is that she is studying anthropologists and their discourse as a cultural artifact in its own right. In this respect, Engle's article breaks out of the stable frame of analysis maintained even in most studies of human rights as a "culture," in which human rights practices and discourses have remained an object of analysis distinct from the social scientific observer. As I will describe, this appropriation of anthropology's methods—the appropriation of cultural analysis, and of ethnography, not simply of anthropological concepts such as "culture"—is an increasingly common occurrence in the human rights world.

This suggests that it is necessary to treat the intersections and gaps between disciplines as its own ethnographic zone, to observe how particular actors make claims for themselves and their disciplines through and against disciplinary accounts and the borrowing of one another's methods. In this context, the question of exactly how anthropology's methods and tools get appropriated, reformulated, taken apart, critiqued, and reclaimed becomes a subject worthy of ethnographic investigation. Accordingly, I want to extend recent ethnographic work on the culture of human rights regimes to revisit ethnographically the marginalization and appropriation of anthropology's tools and insights by the human rights regime.

Attending to the contours of this discursive landscape will require rethinking the project of the anthropology of human rights and, indeed, the project of the ethnography of expert cultures in a number of ways. Douglas Holmes and George Marcus have recently argued that what they term "para-ethnographic" activities—activities that are in some sense analogs to ethnography—are, in fact, quite ubiquitous aspects of cultures of expertise (Holmes and Marcus 2005). Holmes and Marcus's insight in turn evokes long-standing debates in the anthropology of law and science about the specific problems associated with "studying up" (Nader 2002). Yet the phenomenon at issue in this case is something more challenging still than "analogs" to anthropological practice or even ethnographic subjects on par with anthropologists in terms of levels of expertise, authority, or status. Here, we have subjects who explicitly appropriate anthropology's methods, concepts, and practices, even to the extent of turning these back on the study of the

discipline of anthropology itself. Moreover, one condition of this ethnography is that the bureaucratic, scholarly, and activist outputs skeptical lawyers produce are already deeply intertwined with the personal and institutional networks, reading lists, and publication practices of anthropologists working in human rights fields. In some ways, the subject is already too well known to be apprehended as a "new ethnographic subject."

One way to describe this condition would be to say that anthropological knowledge and human rights knowledge often work the same terrain, but at cross-purposes. One example would be the consequences of anthropology's disciplinary commitment to context when anthropological discourse enters the human rights field. Anthropologists sometimes invoke context in debates about human rights when they assert that different geographical and social contexts produce entities of different orders. For example, claims to rights to be free from military violence in Peru do not require engaging claims that the veil violates women's human rights in Afghanistan, an anthropologist might assert, because the context of the deployment of human rights discourse in one case is so radically different than in the other.

Yet this impulse to contextualize is directly at cross-purposes with the logic of human rights claims. Human rights rhetoric is a tool precisely for rejecting such appeals (by so-called human rights "violators") regarding the special social, political, or economic context of their particular acts of violation. Human rights rhetoric is effective only to the extent that it negates such contextually derived distinctions—to the extent that it is possible to claim that a human rights violation anywhere is of the same epistemological order and of the same moral, political, or legal significance as a human rights violation elsewhere. By virtue of anthropologists' very participation in human rights rhetoric, therefore—that is, to demonstrate their membership in the community of human rights enforcers (and to counter suspicions that anthropologists side with human rights violators, as in the "culture" debates)—anthropologists working for human rights would seem to be forced to negate their own commitments to contextual differentiation.[2]

What is interesting for present purposes is that both Merry and Engle agree that the field of human rights is a distinctly legal culture (Merry 2003:71). Indeed, for Engle, anthropologists' struggle with the subject of cultural relativism is better understood as a struggle with their own relationship to human rights law as a discursive regime. I read Engle's analysis to suggest that in the human rights world, the culture concept itself is often a linguistic marker, a shorthand for the problems with the legal human rights regime and for moments or points of rejection of that regime. An invocation of "culture" is a performance of dissent within this vocabulary. When anthropologists assert that culture is not a problem for human rights, then, it is a way of saying that they wish to participate in the legal regime human rights rather than dissent from it.

There is growing agreement among both anthropologists and critical lawyers that in many cases the knowledge practices at stake in human rights regimes borrow implicitly or explicitly from legal institutions, theories, doctrines, and forms of subjectivity. In my own work, I have shown how the knowledge practices of even the least overtly legal of UN activities, the UN World Conferences, are best understood as spheres of legal knowledge—insofar as they explicitly engage diverse constituencies (from so-called experts to so-called grassroots) in a common practice of document production that emulates legal practices (Riles 2000). Harvard law professor David Kennedy, a prominent figure in the critical study of international human rights law, makes the same point from his disciplinary perspective:

> The daily newspaper reminds us that it is the sovereign, the President, the Parliament, the government, which decides. Theirs is the vocabulary of politics... But increasingly the decisions which allocate stakes in global society are not taken there and are not contested in these terms. They are taken by experts, managing norms and institutions in the background of this public spectacle—legal norms and private institutions, decisions rendered in technical vocabularies. [Kennedy 2004:349]

In this article, I build on these observations to argue that the problems anthropologists encounter with the appropriation and marginalization of anthropology's analytical tools are best understood in terms of the particularly legal character of human rights.[3] In other words, I argue that an ethnographic understanding of many aspects of the human rights regime demands treating such aspects as spheres of legal knowledge practice. To be more precise, I posit that the discursive space of "interdisciplinarity" between anthropology and human rights is animated by the pervasive instrumentalism of legal knowledge. From this perspective, I argue that anthropologists and lawyers who critically engage the human rights regime share a common problem—the problem of the iron cage of instrumentalism—although they encounter it in different ways and from the vantage point of different starting problems and ultimate solutions. I conclude that the ethnographic method, reconfigured to respond to the specific challenges of legal instrumentalism, offers a respite from the hegemony of legal instrumentalism at those points at which critique and irony, the tools of critical human rights lawyers, fail.

HUMAN RIGHTS SKEPTICISM

I approach this subject from the point of view of my ethnographic work among critical human rights lawyers. As part of a larger study of the character of legal knowledge among lawyers working in various capacities in the United States, Europe, and Japan, I have worked closely over the past ten years with legal scholars, bureaucrats, and activists involved in various aspects of international law, human rights, and "law and development." All of these people share a profound and sophisticated skepticism about various aspects

of the human rights regime—its theoretical claims, its institutional practices, and its archetypal subjectivities.

The particular skeptics of human rights law with whom I have worked are largely associated, in one way or another, with a school of international legal theory they term the "New Approaches to International Law" (e.g., Riles 2002). David Kennedy coined the term *New Approaches to International Law* and its acronym *NAIL*. Kennedy once explained to me that the adjective *new* meant nothing at all and, hence, revealed nothing substantive; nevertheless, it had an inherently positive valence. "Who can be against the New?" he said. In 1997, Kennedy organized a conference at Harvard entitled "Fin de NAIL: A Celebration" (see Skouteris 1997). The conference launched the term in the vocabulary of the broader field of international law and human rights. But it did so by pronouncing the "new approaches" as already officially over at the moment of its launching. NAIL seemed to anticipate possible future critics of their own movement with the observation that there is really no point in critiquing (or for that matter describing ethnographically) NAIL because it was already over.

Participants in NAIL include legal academics; bureaucrats working in international organizations such as the World Bank, the International Monetary Fund, and the European Commission; members of the foreign service of various countries; practicing lawyers; investment bankers trained as lawyers; individuals running nongovernmental organizations (NGOs) in the developing world; and so forth. The community in question is geographically dispersed—from Cairo to Cambridge, Nairobi, Seoul, Madison, and Rio de Janeiro. Nevertheless, these skeptics enjoy relatively easy access to the considerable public, private, and university funding resources available for "global" projects in human rights, law and development, or rule of law reform; hence, they meet frequently. Since the mid-1990s, there have been several annual international conferences on doctrinal subjects in international law (comparative law, new forms of international regulation, public international law, human rights law, etc.). These conferences have provided the more formal setting for such skeptics to meet, and over the years, several hundred persons have participated in such conferences. But formal conferences are only one venue. There are also more informal settings such as gatherings at one person's country house in New England or the south of France; the constant flow of apprentices (graduate students, young bureaucrats in training, visiting technical experts and visiting lecturers, and romantic partners); a continual circulation of texts (academic articles and position papers) via e-mail; gossip; and intellectual, political, and personal critique—all of which are equally constitutive forms of knowledge production.

These meetings are important to the individuals who attend them because one of the crucial aspects of their own subjectivity, in their own conception, is a sense of their own marginality vis-à-vis the human rights regime, by virtue of their skepticism. Notwithstanding this self-image of professional and political marginality, however, these skeptics now include persons who hold key positions at many elite academic institutions around the world, and persons who play key roles within international bureaucracies from the United Nations to the European Commission to the diplomatic service in both the developed and developing world. In his ethnographic work among participants in the international humanitarian organization Medecins Sans Frontières (MSF) in Europe and in Africa, Peter Redfield describes an analogous phenomenon. MSF workers, with a dose of irony, work to maintain for themselves an image of the "unshaven, cigarette-smoking French man," in the words of one MSF volunteer (Redfield 2005a), even as their operations have grown to a global scale, taken on a highly professionalized valence, and received such mainstream recognition as the Nobel Peace Prize.

Another pronounced feature of these skeptical lawyers' subjectivity is a highly self-conscious marginality, a carefully performed self-positioning at arm's length distance from every given political position and associated group, including even NAIL itself. People who participate in this sociality recoil at the embarrassingly naive suggestion that they are "members" of a group or "adherents" to any particular ideology. If one were to ask many of my informants to recount their recent professional life histories, it would be clear that NAIL activities play an important role in their own self-descriptions. Nevertheless, these informants do not wish to go so far as calling themselves "NAIL persons" or "NAIL members"—that is, they do not wish to suggest that these activities are actually constitutive of their own identities. I know of no one—not even the persons who might be objectively described as the founders of NAIL—who would openly claim, "I am a 'New Approaches' person." In fact, most of my NAIL friends would quibble with a characterization of them personally as exemplars of persons involved in NAIL (although they would usually agree with the characterization of others).

There is considerable division of opinion about issues ranging from the relative importance of political economic analysis versus deconstruction, to the value of engaging in debate with so-called human rights "true believers," to the privileging of Euro-American and male perspectives. In the late 1990s, a number of "New Approaches" conferences became stages for disputes over what scholars who represented "Third World" perspectives (organized as an informal subgroup within NAIL under the acronym TWAIL, or Third World Approaches to International Law) saw as the marginalization of questions of particular concern to them by some First World white male professors. But there are also other sources of conflict within NAIL, ranging from disputes over who makes the best dinner company—human rights victims or human rights victimizers—to personal divisions resulting from the breakup of romantic partnerships to negative evaluations of one another's performances at academic conferences, often retold with wicked humor over drinks following formal proceedings.

Although the content of NAIL skepticism is asserted in different theoretical vocabularies and in different modalities (academic articles, internal bureaucratic documents, or NGO position papers), and although different individuals emphasize different issues, a summary of the theoretical positions of these lawyers may prove useful as a guide.

A Critique of Power Relations

This critique includes the following points: Numerous forms of coercion take the form of intervention in the name of, or compliance with, human rights (Mutua 2002:19). The field of human rights is a predominantly U.S. project; hence, it raises questions about U.S. global domination, in particular (Mutua 2002:36). One also cannot discuss human rights without analyzing the influence of large donors based primarily in the United States and Europe who, whether purposefully or not, promote certain local intellectuals and projects that fit more closely with their own agendas while ignoring others (cf. Mutua 2002:38). Moreover, human rights discourse has now achieved a kind of hegemonic status: It is "the sole approved discourse of resistance" (Rajagopal 2003:165). Hence, it is important to pay attention both to what cannot be said in the language of human rights and to the way human rights discourses disempower other discourses of resistance.

A Distrust of Claims to Ethical Purity

Perhaps what unites these skeptics more than anything else is an instinct that simple ethical positions—the good human rights activist versus the bad human rights violator—are doing far more work than first meets the eye. Firsthand accounts of experiences in the human rights world, often told in a highly entertaining tone, serve as recurring parables, whose point is that human rights work is often less in the service of "victims" and more in the service of the legitimation of the human rights regime, its institutions, and the activists and bureaucrats who work within those institutions (and along with these, the funding streams and the professional and symbolic capital that allow this work to continue). This is fine, from the NAIL point of view, but what is annoying is that these activists and bureaucrats refuse to admit this commonly understood truth and persist in pretending that they are doing "God's work." The human rights lawyer Makau Mutua sums up the point:

> I know that many in the human rights movement mistakenly claim to have seen a glimpse of eternity, and think of the human rights corpus as a summit of human civilization, a sort of an end to human history. This view is so self-righteous and lacking in humility that it of necessity must invite probing critiques from scholars of all stripes. [Mutua 2002:x]

Mutua compares the self-presentation of the human rights activist to the arrogant zeal of the evangelical missionary (2002:13). Others point to the hidden personal costs to the human rights worker who must continually suppress his or her own "bad faith" in the entire human rights project to keep up heroic appearances. David Kennedy makes the point in a different way: Human rights types like to believe that they are powerless fighters for the powerless, speaking truth to power from outside the centers of authority, he points out. One comfortable consequence of this myth of their own powerlessness is that they rarely feel they must take responsibility for the consequences when human rights campaigns go dreadfully wrong as they tell themselves that other, more powerful actors ultimately made the decision to invade Afghanistan or to bomb Sarajevo. For such people, "it can be unsettling to think of humanitarians, whether activists or policy makers, as participants in the world of power and influence" (Kennedy 2004:xvii). Janet Halley takes up the point in the context of the globalization of feminist discourses. She points to the growing hegemony of "United Statesean feminism" in global international organizations and the participation of feminism in new projects of global domination around the regulation of sex in particular:

> If you look around the US, you see plenty of places where feminism—far from slinking about underground—is running things. Sex harassment, child sexual abuse, pornography, sexual violence. . . . In some important senses, *feminism rules*. Governance feminism. Not only that, it *wants* to rule. It has a will to power. [Halley 2004:65]

Although the figure of the human rights skeptic may seem rather marginal in the human rights landscape, recent ethnographic work among other classes of human rights workers suggests that the skepticism that these lawyers claim as their badge of distinction from the "mainstream" human rights community may be far more generally shared. AnnJanette Rosga's ethnographic work on the training of Bosnian police officers in human rights methodologies, on the one hand, and the production of social scientific research by international organizations seeking to document such human rights violations in Bosnia-Herzegovina, on the other hand (Rosga 2005a, 2005b, 2005c), unearths pointed, sophisticated, and also highly humorous internal discourses about the limits of human rights machinery among figures at the very center of the human rights machinery (Rosga 2005a). Likewise, Peter Redfield's MSF informants continually spoof themselves in their publications and speeches as a bunch of overgrown 1960s radicals out of touch with reality. What is interesting about all of these figures is that they elaborate critiques of the human rights regime in the very course of their own engagement with "doing" human rights work. The skeptical human rights lawyers in NAIL are also teaching human rights law, serving as expert witnesses, training military commanders in human rights technologies, producing human rights documents, going on human rights fact-finding missions, ordering military strikes, planning and implementing structural adjustment programs, and serving on university sexual harassment committees.

A Para-Academic Modality of Analysis

But as the conversation between Engle and Merry suggests, there is one further aspect of this skepticism that explicitly calls anthropological discourse into conversation. It will be

apparent to the reader that there is considerable theoretical affinity between these lawyers' views of human rights and those of many anthropologists who study human rights. The points summarized above play a central role in the anthropological literature on human rights as well (e.g., Abu-Lughod 2002; Mamdani 2001; Nelson 1999). Indeed, these lawyers import their critiques from bodies of theory that have also influenced the recent anthropology of human rights (e.g., the work of Foucault, Fanon, Freud, Butler, Sedgwick, Marx, Derrida, and Lacan).

These skeptics sometimes differentiate themselves from other human rights participants (in their own conception) by producing "theoretical" styles of knowledge (see Skouteris 1997). In particular, they have written a substantial number of articles for academic law journals and have published some books aimed at an audience of human rights actors. I have also often heard the authors of some such articles and books express the hope that they might be recognized as wider public intellectuals with an audience beyond the human rights community.

In this protoacademic guise, the methodology includes discursive and historical analysis aimed at excavating abandoned strands in the history of human rights law and at understanding the discursive roots of its limitations (e.g., Koskenniemi 2002). For example, some articles and books trace the influence of ideas of civilizing and evangelizing missions, and accompanying tropes of the "civilized" and the "savage," on the mediation of modern-day relations between the First and Third Worlds through the discourse of human rights (e.g., Anghie 1996). These self-styled theorists are also particularly fond of what they term *mapping exercises*. These might involve analyses of fundamental concepts in human rights (such as the "culture" concept) that reveal hidden tensions and contradictions (Rajagopal 2003:210). Mapping can also mean producing a discursive catalog of the range of possible positions or arguments on any given issue in human rights, which although accurate, has the effect of objectifying the arguments of one's colleagues in the "mainstream," of turning them into discursive specimens.

One initial ethnographic insight to be drawn from this material, then, is that to the extent that some anthropologists understand their task as critiquing the human rights regime and its discourse, they have competition. Some actors from within the human rights world already produce subtle and sophisticated critique. Moreover, these actors are deploying many of the same theoretical tools anthropologists deploy to launch this critique. Anthropologists certainly can engage in critique alongside these actors, and perhaps even learn some critical moves from them, but we should not imagine that we have privileged access to a different or more devastating line of argument. In this respect, to the extent we claim critique as a plane of disciplinary privilege, our critique may indeed have "run out of steam" (Latour 2004; see also Redfield 2005b; Riles 2000).

But it is not just the space of critique that our subjects now claim for themselves. They also claim the space of cultural description and analysis. For example, in his recent book, David Kennedy includes several chapters of first person narrative that aim to capture the culture of human rights practice in its full subtlety and complexity. He does so in ways that uncannily resemble an ethnographic account (Kennedy 2004). His first-person accounts are full of sensitive and destabilizing insights that might make many an anthropologist of human rights envious. One feature of human rights as a fieldwork locale, in other words, is that the anthropologist must contend with, and perhaps even participate in, the subjects' own paraethnographic work (Holmes 2000; cf. Riles 2001).[4]

DIFFERENCES OF GENRE

On closer observation, however, something is "off," from an anthropological perspective, in this work. David Kennedy's cultural description, based on short trips to conferences, a day on a battleship, a few days on a human rights mission, and so on, more closely resembles the genre of 19th-century travel diaries than Malinowskian social science. The "mapping exercises" that dominate the academic work of these skeptical lawyers are likely to strike anthropological audiences as somewhat sloppy, imprecise, and uninformed. One anthropologist friend to whom I recommended David Kennedy's book commented after reading it that it was an arbiter of the law professor's privilege that the author could make points that are in general circulation in the academic culture without acknowledging the work of others, or perhaps that the author could even hold onto the conceit that he or she is the inventor of those ideas. Other anthropologists have commented on their frustration with these lawyers' lack of interest in the details of human rights conditions in locales that the anthropologist has experienced firsthand.

It is perhaps this irksome sense of amateurism, of free play and frivolity about the details, that animates Merry's critique of Engle's discussion of anthropological debates. Other anthropologists have criticized what they see as the futility of legal theory games for their own sake—the propensity of these lawyers to play freely and loosely with concepts, to mix and match, to do some structuralism here and some psychoanalysis there without a clear sense of theoretical, epistemological, or ethical commitment. How should we make sense of this disjuncture between analytical styles, and is the propensity on the part of anthropologists to see in this disjuncture a disciplinary difference warranted? To begin to answer this question, it is necessary to say more about the cultural practices of these skeptical human rights lawyers.

Beyond the scholarship, there are also differences in anthropologists' and critical lawyers' genre of self-presentation. The carefully calibrated and yet highly ironic move of self-constitution as a movement whose moment has passed—as implied by the conference title "Fin de NAIL"—gives some sense of the discursive sophistication of these actors. It also is suggestive of the importance of image—of producing a proper subject and object—for these actors. In my conversations with anthropologists who have

attended NAIL conferences, I have heard many anthropologists voice distaste at what they perceive as a "posturing," "flippant," and "cliquish" personal style on the part of attendees at NAIL events.

For some anthropologists, however, the problem may not be differences, but similarities. Comments from some anthropologists suggest a certain confusion or even frustration about the fact that skeptical human rights lawyers do not behave in the different, lawyerly way these anthropologists might have imagined human rights lawyers to behave. These lawyers seem too interested in critical theory and too uninterested in the technical details of law. Furthermore, their work seems inadequately focused on designing and implementing "concrete" human rights projects "on the ground." They should be less internally focused and more ethically committed. They should be acting in the trenches, not in the ivory towers of theory, in other words. The criticism is a source of consternation for some skeptical lawyers. One critical human rights lawyer told me of the experience of attending a conference of human rights lawyers and literary theorists on the subject of human rights. At the conference, the literary theorists repeatedly prodded him to take more mainstream positions on doctrinal legal subjects, and they repeatedly voiced frustration at his interest in "theoretical" questions. When he refused to play the role they had set out for him, he told me, one cultural theorist told the group, "I think our problem is that we have the wrong lawyers at this conference" (conversation with author, April 15, 2005). The human rights lawyer found the story amusing but also symptomatic (to use his wording) of cultural studies scholars' fantasies about the law.

But one might make the same observation about these lawyers' fantasies about anthropology. For their part, as Merry suggests in her article, critical human rights lawyers entertain fantasies about anthropology as the realm of "culture," as a kind of ready-at-hand antidote to the technocratic rationalities of law. These lawyers often voice a hope that anthropology might be a realm of imaginative possibility, or of glamorous new theory, perhaps even a semi-utopian space full of accounts of modernism's others—in short, of scholarship untethered from instrumentalism. Hence, many express frustration when anthropologists put their own knowledge practices to one side to advocate in "lawyerly" language for human rights. In an analogous way to some anthropologists' sense that something is "off" in these lawyers' usage of theory, critical lawyers argue that something is "off" in anthropologists' invocations of law.

One example of this criticism appears in a 2003 debate in *Political and Legal Anthropology Review* (Vol. 26, No. 1) between John Borneman (2003a, 2003b) and legal scholar Kunal Parker (2003) regarding U.S. intervention in Iraq. Borneman, the anthropologist, advocates the rule of law after "regime change" in Iraq; meanwhile Parker, the legal scholar, expresses skepticism about Borneman's underlying conception of "law." Parker argues that Borneman can sustain his faith in the potential of the rule of law in postinvasion Iraq only by subscribing to a naive layperson's understanding of the separation of law and politics:

> This leads... to... Borneman's faith in the distinction between "democracy" v. substance, with its historical contingency, and "law" v. procedure, with its alleged ahistorical universality and stable meaning. American legal historians have long known that the boundaries between "politics" and "law," or between "substance" and "procedure," are infinitely malleable and have shifted over time. Calling something "legal" or "procedural" has served as much to designate it as not "political" or not "substantive," and thereby to mask its political nature, as anything else. Furthermore, the meaning of the most "procedural" law is always indeterminate. [Parker 2003:46][5]

Parker's argument here is not idiosyncratic: I have heard critical lawyers point out on several occasions that anthropologists believe too much in a simplistic, idealized view of law, in general, and of human rights, in particular. This demonstrates that anthropologists are not experts on human rights—if they were, they would be more agnostic about human rights law, because the marker of a true expert is a subtle agnosticism. But it is equally interesting that this exchange about the character of law builds on an earlier disagreement about the nature of anthropological knowledge. Parker writes,

> Borneman states that he speaks as a social anthropologist, as one "concerned with aspects of the social, of rebuilding the social body and its culture after violent conflict." Are we to take it then that anthropology's role in the unfolding narrative of "regime change" is to be no more than one of identifying for political power the realm of the "social" as something that needs the most thorough "caring" transformation? I hope not. [2003:47, citations omitted]

To which Borneman replies,

> Parker imagines a bemused and benign role for anthropologists, where ethnographic encounters render our "mediated conceptual weaponry... mysterious, serendipitous, and surprising." This is a lovely romantic vision, but just does not hold (if, in fact, it ever did) for most contemporary fieldwork-mediated knowledge. Most of our encounters are downright repetitive and predictable, even though they also entail unanticipated forms of engagement and kinds of responsibilities. We are told to look for cracks in the facade, from margins to center, for hope amidst despair, or critique at the heart of the assertion of habit. But these are positions of initial engagement, not outcomes of a longer period of engagement with alterity and of a writing process, at the end of which surprise, or the distinction between margin and center, is often just a heuristic device if not a ruse employed to claim ethnographic authority. [Borneman 2003a:53]

In this exchange, Parker and Borneman stake out clear disciplinary perspectives: Each speaks from the standpoint of a discipline—law or anthropology. Each steadfastly, even absolutely, refuses the fantasy the other holds about his discipline. Law cannot master politics, as the anthropologist might fantasize, Parker tells Borneman; fieldwork cannot produce surprise, as the lawyer might fantasize, Borneman

retorts. Their dialogue highlights some of the frustrated fantasies and confusions about genre that pervade the engagement of anthropological and human rights discourses. In the section that follows, I argue that this problem is best understood by treating human rights as one instantiation of legal knowledge practices.

HUMAN RIGHTS INSTRUMENTS

Although the rich and sophisticated exchange between Parker and Borneman described above involves many issues, from the character of ethnography to the nature of politics, what first ignites Parker's critique of Borneman's argument for the Rule of Law is Borneman's confidence that law can be wielded successfully as a tool. Engle's criticism of anthropologists' "embrace" of the human rights regime likewise reflects a certain bemused frustration with what she views as anthropologists' newfound faith in the instrumental value of human rights. These two lawyers' skepticism about the instrumentalist understanding of law they find in the work of their anthropological interlocutors builds on a long history of legal instrumentalism and of frustrated attempts to critique and dislodge it.

As I have shown elsewhere (Riles 2004), an instrumentalist conception of law is the agreed theoretical and political basis of modern U.S. law. This political and theoretical understanding of law as a tool or instrument also provides the concrete, day-to-day form of legal knowledge practice—that of thinking in terms of relations of means to ends. The phrase "law is a means to an end" or "law is an instrument" appears hundreds of times in the canonical texts of modern U.S. jurisprudence.[6] This technocratic instrumentalist understanding of law is as prevalent in projects of legal reform that present themselves as politically "progressive" as it is in the service of conservative projects. To think like a lawyer is to think of law as a tool or a means to an end, whether one imagines law as a tool of social justice or a tool of corporate interests. This is not to suggest that legal knowledge does not, at particular points, invoke, defer to, or deploy genres of knowledge that are explicitly imagined as "not technocratic," as demonstrated in Mariana Valverde's (2003) work on the uses of common knowledge in legal settings. Indeed, I want to suggest that we understand the fascination with culture and with anthropological methods in human rights law as just one such point of invocation and deferral. Yet the uses of such knowledge, and the framework within which it enters legal debates, remains defined by an instrumental logic.

In the postwar period, international law has developed in an increasingly technocratic direction. The influence of the U.S. technocratic instrumentalist approach to law has been particularly strong through the leadership role of U.S. trained lawyers (of various nationalities) in the building of key institutions of the postwar international legal regime. These U.S.-trained lawyers have promoted a vision of international law as a set of problem-solving institutions and of legal techniques deployed and managed by international bureaucrats. In this way, the technocratic instrumentalism that pervades U.S. domestic legal knowledge has also become the hegemonic form of international legal reform projects such as human rights.

Critical legal scholars have articulated a number of sophisticated critiques of the technocratic instrumentalism of legal knowledge. First, they emphasize that it depoliticizes social conflict. Instrumentalism is sometimes presented as a progressive approach to the law—human rights doctrines in the service of grassroots people, as a means to social ends, for example. Yet some critics suggest that the technocratic, managerial, pragmatic orientation of legal instrumentalism contains a built-in bias against more fundamental change. For example, technocratic processes for advancing women's human rights may in fact predefine what counts as a harm in ways that are profoundly limiting. Some women from the French territories in the Pacific among whom I conducted fieldwork experienced tremendous frustration with the fact that at the UN Fourth World Conference on Women held in Beijing in 1995, it was procedurally difficult to define the experience of colonization as a women's human rights issue. In UN parlance, colonization is a political question, not a technical one (Riles 2000).

Critical legal scholars have contributed sensitive, yet scathing, sketches of the "double binds" and "bad faith" entailed in the subjectivity of the technocrat who, to assume his proper role, must develop a professional insensitivity to certain kinds of "irrational" interests. For example, it becomes necessary for the Venezuelan-born but Harvard-trained lawyer at the international organization to assert that Latin American NGOs that speak about the harms of neoliberal legal reforms are well intended but just do not understand the technical details. Or it becomes necessary for the advocate of humanitarian intervention to turn a blind eye to the collateral damage inflicted by such interventions (Kennedy 2004).

For my informants, these questions also frame the practical conditions of the institutional politics within which they operate. They have many stories about being passed over for promotions, being ignored as candidates to lead important projects, or being denied tenure at universities on grounds that their approach to international law is "just not practical." I was recently told of a young diplomat who, when asked to write a country report on human rights in China, produced a brilliant discussion of the ways human rights rhetoric was being deployed and redeployed in the service of projects most would see as decidedly not progressive. Needless to say, the storyteller told me, the diplomat was required to rewrite the report entirely to eliminate this "extraneous" discussion. In these persons' view, an unquestioned belief in the fundamentally instrumental nature of law, as well as a lack of tolerance for "theory," "utopian thinking," or "critique," have too often convinced well-meaning people in the human rights system to take the wrong positions. Yet it is well accepted by critical human rights scholars that even the most sophisticated critiques of the

political biases of instrumentalism usually cannot be articulated or heard within human rights institutions. In the legal academy and in international human rights organizations alike, critical lawyers bitterly recount the experience of watching efforts to critique the distributive consequences of technocratic regimes get sidelined on their own technocratic grounds. This problem with the failure of critiques of instrumentalism for critical lawyers also indexes their sensitivity to what they perceive as the larger failure of critique in the face of the hegemony of neoliberalism.

It is not simply that critique fails to dislodge legal instrumentalism for these lawyers: Instrumentalism is also the condition of their own daily work, as laborers in the law. Whatever sociality critical human rights lawyers share through conferences, e-mail contacts, and holiday visits, daily work and life takes place in a quite different register. In their work as law teachers, they must teach legal doctrine from a largely instrumentalist point of view; in their work as bureaucrats, diplomats, or corporate lawyers, they must think about legal projects, and about their own role in those projects, in an instrumentalist way. I have often heard critical human rights lawyers talk of "passing" as "mainstream lawyers" or of their "closeted life" in the bureaucracy, the law firm, or the academy, speaking in only half-joking parallels to the experiences of sexual and racial minorities. Some people I know resent this daily engagement with instrumentalist legal knowledge as an intrusion, a waste of time, or even a kind of subjugation. Others enjoy their involvement in "mainstream projects," value that work as a kind of craft, and are proud of their modest accomplishments in that world. However, for all my informants, the opportunity to perform one's skepticism of legal instrumentalism in some contexts depends also on submission to the instrumentalist knowledge practices and forms of subjectivity that define human rights law at other times and in other contexts.

In this sense, instrumentalism becomes the iron cage of daily knowledge work from which engagement with critical theory and with anthropology—as well as participation in events at which one is encouraged to voice one's skepticism about legal knowledge explicitly—serves as an exception, a point of respite. These individuals persist in understanding their skepticism about the human rights regime as a marginal position in the human rights world because they interpret their personal successes within human rights institutions as the result of their skill in hiding their skepticism, not the result of that skepticism. I believe that we can understand these persons' careful performances of marginality or distance from both mainstream and critical positions, and their heightened sensitivity to questions of self-presentation, as an effect of the complicated self-positioning required to balance their subtle and multifaceted relationship to the instrumentalism of legal knowledge.

From this point of view, we can understand the styles of scholarship and self-presentation—the performances of frivolity, gossip, even purposeful academic amateurism—as (momentary) positions of something that is not technocratic lawyering. Indeed, this is precisely what some anthropologists found puzzling about these performances. The lawyers' spoofs of the *earnestness* (to use their wording) of human rights activists and the identity claims of human rights victims become ways of drawing attention to an ethical landscape in which human rights victim, human rights violator, and human rights advocate all are already instrumentalized subject positions. These are attempts to show how one cannot engage these subject positions outside the hegemonic logic of means and ends, despite the efforts of various players in this game to divide themselves into what Mutua calls the human rights "saviors," the human rights "victims," and human rights "savages" (Mutua 2002:10).

The genre of the spoof or the purposefully frivolous draws attention to these ironies without producing yet another earnest and, hence, instrumentalizable account of the human rights regime. In other words, these performances reject the earnestness of efforts to critique legal knowledge as both ineffective and intellectually disingenuous. It is seen as ineffective because it is too easily either sidelined by technocratic reasoning or instrumentalized as the rationale for further "interventions" on behalf of further "victims"; it is viewed as disingenuous because it fails honestly to acknowledge the critic's own participation in the technocratic machine he or she critiques. Such performances also cast aside any utopian fantasies of dislodging the hegemony of technocratic instrumentalism. In this respect, skeptical human rights lawyers share certain intellectual and political affinities with certain strands in postmodern theory, and these bodies of theory command considerable interest among these skeptical lawyers. I am often asked about anthropology's reflexive moment of self-critique. From my informants' point of view, George Marcus, James Clifford, Clifford Geertz, and Donna Haraway are the most familiar and well-respected examples of the contributions of anthropology to the understanding of the current ethical situation.

Engle's argument that culture is a marker for what is not-law, then, nicely captures the appeal of culture for skeptics as a place of respite from the technocratic dimensions of law. In conversations with skeptical lawyers, I often hear the term *culture* used to mean something closer to the anthropological concept of "theory." (E.g., a "cultural approach" to law could mean a Foucauldian approach, a psychoanalytic approach, or, in fact, any approach that is not "empirical," instrumentalist, or already committed to a technocratic project.) The very marginality of culture—and of anthropology, as the discipline devoted to culture—to law is what gives culture and anthropology their cachet. The invocation of culture is a performance of lack of faith in instrumentalism, on par with the frivolity, spoofs, and posturing that frustrates some anthropologists who come into contact with these lawyers.

But if it is possible to understand these skeptics' turn to anthropology and to the concept of "culture" as a kind of escape from instrumentalism, there are ways in which these skeptics nevertheless remain deeply instrumentalist

in their own thinking. Although they do not wear their instrumentalism on their sleeve, it bubbles to the surface at key moments. I remember receiving a particularly strong rebuke at a NAIL conference, when I was a young anthropologist first presenting my own research on human rights institutions. The rebuke came from a prominent member of this group, a diplomat from a small northern European nation. This person, a devotee of poststructuralist theory, had already published highly sophisticated semiotic analyses of international legal ideology and, hence, was knowledgeable in the bodies of theory I was deploying. But for his taste, my work went too far. He responded to my presentation with a resounding, highly agitated account of the necessity to act at the moment—something to the effect that at the moment "when two ships are about to collide in the night," the international lawyer must intervene. It was an account of the realness of crisis and the need to make a practical, instrumental decision. What was particularly confusing about this rebuke was the way it equated kinds of work anthropologists would want to differentiate. My critic saw poststructuralist theory, "navel gazing," and ethnography as all forms of leisurely nonaction, as opposed to professional, up-to-the-minute instrumental action.

Most critical human rights lawyers I know are rarely so explicit, but on closer analysis many aspects of their practice are best understood in terms of the relation of means to ends. At a conference I attended several years ago, a young graduate student in law, new to the world of human rights skeptics, asked, "What about justice? Why don't we talk more about social justice concerns?" The groans and snickers were audible as the speaker put on an expression of feigned seriousness and sympathy for the question. The speaker then calmly proceeded to take the question apart by challenging what "justice" could mean in that particular context with a series of humorous but shocking anecdotes of "victims" in one context becoming monstrous perpetrators of human rights violations in the next. The student later said she felt humiliated, patronized, and offended by the particular examples the speaker had chosen, which she felt were specifically chosen to provoke her. I never saw her at another such event.

I think we can understand the experience of this student as an encounter with the very same instrumentalist technocratic legal knowledge practices these skeptics reject in other contexts—albeit presented in their own performances as a postmodern rejection of legal knowledge. The technocratic, instrumentalist conception of law treats law as a means not an end. The ends of law, rather, are defined in other spheres outside the law (politics, society, and economy). For example, a law might be a tool of social justice, economic efficiency, public morality, a "culture of life," or economic redistribution. The same legal argument could be used in a legal brief for the purpose of exposing racism or for harassing one's former spouse in a divorce settlement. Those are the ends, and they are for politicians or clients to decide. Lawyers rather stick to the manipulation of the means. The technocratic lawyer, as wielder of the tools is a controlled, limited form of subjectivity, one that acts on behalf of, and yet yields to, someone or something beyond herself or himself as well as beyond the tools (the human rights victim, the human rights cause, and the ends). To be a professional lawyer, then, is to be agnostic about the ends and to be far more interested in the means (Riles 2004). In other words, the student's "error" in asking "What about justice?" was that she drew too much explicit attention to the ends. That these critical lawyers should experience that as an embarrassment, as a kind of taboo that demands a humorous but, nevertheless, sanctioning response, suggests the affinity between their own knowledge and that of the very technocrats they abhor.

Even the para-academic quality of these skeptical human rights lawyers' knowledge—the deployment of poststructuralist arguments, the appeals to modes of description that mirror ethnography—are always already a kind of instrument, a weapon to make a specific intervention in the activities of or debates about human rights institutions. David Kennedy, for example, tells his readers that his contribution is not new knowledge but, rather, the instrumentalization of old knowledge: "The negatives [of international humanitarian work] are discussed privately, often cynically, but rarely strategically" (Kennedy 2004:xviii). Likewise, Engle's critique of anthropologists' attempt to mediate their dual commitments to human rights and to cultural difference with the concept of a "right to culture" is ultimately framed in terms of the difficulty of instrumentalizing such a concept as a technique of intervention: "Collective rights, along with the other mediating techniques, might provide new justifications for the AAA to act, but they don't determine how it should act" (Engle 2001:559).

No wonder the work seems askew to many anthropologists—what looks like the misuse of the culture concept, for example, is in fact a solution to an entirely different problem, a means to an entirely different end. Engle's *culture* has little to do with anthropological definitions of *culture* (even though she understands herself to be writing about anthropologists' use of the word *culture*). Rather, Engle's culture concept takes its form from the legal work the term does in framing and channeling the larger (political) conversation about the human rights regime and its limits. From this point of view, it is beside the point to correct the lawyer's inaccuracies. What Engle has done is not so much "demonize" culture, as Merry (2003) suggests, as instrumentalize it.

This of course is not Engle's aim. On the contrary, she and other critical human rights lawyers seek to produce a kind of knowledge that sidesteps the technocratic instrumentalism of legal knowledge. And yet, an ethnographic account of these skeptical human rights lawyers must emphasize the ease with which a critique of legal tools is transmogrified into a tool of legal critique; the way an insight becomes an intervention in a legal debate. In other words, the ethnography of skeptical human rights knowledge draws attention to the propensity of the means–ends relationship to absorb everything into its own logic—essentially to make a

tool out of anything and everything. The inexorable problem of my informants is that a description of an instrument is itself already an instrument—an extension or use of the very instrument it describes.[7]

CIRCLING BACK

I have argued that human rights lawyers' invocations of anthropological concepts and methods of knowledge production are best understood as a kind of rebellion against the instrumentalism of legal knowledge—from within the framework of instrumentalism itself. In this context, culture—and the wider ironic and para-academic knowledge practices that invoke culture—becomes a kind of performative position, an alternative to both legal instrumentalism and the critique of instrumentalism. But I have also shown how the performance of culture ultimately fails to produce a position "outside" legal instrumentalism. "Culture" here becomes the inside out (Riles 2000) of instrumentalism. Its form and content are already (negatively) dictated by the form of the legal instrument itself. What implications might this ethnographic insight have for the anthropology of human rights?

In recent years, some anthropologists have positioned themselves and their knowledge as being of some use to human rights administrations; others have lamented the fact that anthropological knowledge is not adequately put to use within the human rights framework. One sometimes hears the suggestion that if only human rights lawyers understood the true nature of Muslim women's experience of the veil, for example, or Melanesians' concept of "ownership," they would make different rules. Often the concept of "culture" becomes the shorthand for anthropologists' potential contribution to human rights law.

The material I present in this article helps to explain the considerable frustrations these anthropologists have encountered when they engage the human rights regime. This discussion of the knowledge practices of even the most anthropologically sympathetic of human rights lawyers demonstrates the proclivity of legal knowledge, with its particularly instrumental character, to instrumentalize everything in its path. That is, to engage the human rights regime, anthropologists must position culture as something useful, something of instrumental value to the lawyer and his client, the human rights victim. As one critical lawyer put it to me recently with cruel irony, "We [human rights lawyers] want you [anthropologists] to give us some facts so we can build better tools" (conversation with author, August 20, 2005). The problem is that a thick description turned into a tool of problem solving is no longer the same thick description. Culture takes on the particular form of an instrument; it becomes its own relation of means to ends. In this context, familiar words and categories—women, culture, or the social group—now have an entirely different valence; they are instrumentalized.

But as Mark Goodale points out in his introduction to this "In Focus," a second wave of anthropological engagements with human rights purposely rejects this kind of role. Some anthropologists now treat human rights regimes as a culture of its own—that is, they seek to describe it as a subject of study. In this article, I participate in this trend in a way by describing in turn the encounter between these anthropologists of human rights and an equally sophisticated group of human rights lawyers. As I show, what both sides share is their rejection of the earlier instrumental view of both law and anthropology. Indeed, for both these anthropologists and these lawyers, reaching out to one another becomes a kind of performance of their rejection of instrumentalism.

Here, the affinities between skeptical lawyers and anthropologists of human rights deserve further attention. The difficulties these lawyers face in overcoming the instrumental character of legal knowledge perhaps have analogs in the difficulties experienced by their anthropological counterparts. First, just as human rights skeptics ultimately contend with their own proximity to legal instrumentalism, anthropologists of human rights institutions contend with the fact that the human rights regime differs in some ways from traditional ethnographic subjects. Specifically, its discursive proximity—the fact that human rights experts will read, react to, critique, and redeploy anthropological work in ways that are beyond the anthropologist's control—exposes the work to instrumentalization by the very subjects of ethnography. Consider once more the dialogue between Engle and Merry, which I alluded to above. Recall that in response to Engle's legal use of the culture concept, Merry extended that concept to law, arguing that international human rights law, too, has a culture. What interests me is the way the "culture" concept itself becomes instrumentalized in Merry's argument, as a tool to be yielded in her debate with Engle. This is so even though Merry's own approach to human rights institutions is self-consciously descriptive and not instrumental.

If skeptical human rights lawyers make clear the limitations of critique in the face of the instrumentalism of legal knowledge, I want to highlight the limits of description, including ethnographic description of the regime itself. That is, to present the human rights regime as another cultural object among others is already to make an intervention in a debate framed in terms of legal knowledge—to create an instrument, in other words. To put the point more generally, a conventional description of human rights is either a use of human rights knowledge against itself, or a use of oneself and one's own knowledge in relationship to human rights knowledge.

In my earlier work, I have sidestepped this problem by focusing on pockets of noninstrumental practice within the legal field. For example, I have described aesthetic practices within human rights NGOs (Riles 2000) and documentary practices within international institutions (Riles in press). Yet I want to close by outlining tentatively the contours of another possible response. To do this, I need to reveal something further about the fieldwork that is the subject of this article.

The conventional model of the fieldwork project goes something like this: Anthropologists begin at home in the academy, with theoretical questions and problems. They go to the field to answer those questions, to solve those problems. In the course of the fieldwork encounter, however, they discover different questions and problems altogether; it is these new questions that are the ultimate effect or consequence of the ethnographic encounter. This model fails fully to capture my intimacy with this particular ethnographic subject. My own trajectory actually worked the logic of problems and solutions in reverse.

I began "among the NAIL," we might say—that is, I was educated into human rights law in dialogue with some of the persons and projects described in this article. I framed my problems and questions there—to put it simply, these were problems about the limits of legal skepticism and questions about how to circumvent the hegemony of legal knowledge (see Riles 2000, preface). I then came to anthropology as an anthropologist comes to the field—in search of solutions to those problems. Along the way, I discovered new—anthropological—problems. Fieldwork in NAIL, then, is an act of circling back, of engaging intellectual and ethical origins from the point of view of problems that now begin elsewhere. In other words, fieldwork entails self-consciously reencountering the subjects of this article as a source of intellectual surprises and as points of engagement for anthropological problems.

As an ethnographic project, "circling back" poses a number of challenges. The first concerns my effort to engage old social relations in a new register. My friends read artifacts of my attempts to engage them as informants, such as drafts of this article, with interest and appreciation. But they read them as exemplars of the kinds of knowledge practices I have described in this article—that is, as ironic performances (albeit with a very serious point). Although I have tried at various points and in various ways to explain my aims, from my informants' point of view, very little has changed in our relationships: They are aware that I "went away" for a few years, became older, perhaps a little less engaged, but that happens to lots of people.

More difficult still is the question of audience and constituencies for the ethnographic account. I am aware that this artifact fails as conventional ethnography. There are some obvious ways in which this is the case: I am unable to provide certain requisite elements of ethnographic description (such as accounts of social relations, history, and politics), because a description of this kind would cause various kinds of harm to my friends, who seek precisely not to account for themselves in these terms. A mere attempt at ethnographic description, in other words, must contend with the unavailability of the aesthetic devices and analytical categories that make up the ethnographic convention. I have struggled with other problems of genre: My subjects would prefer a genre of account closer to their own knowledge practices—a lighter, even ironic telling of their story. But such an account would seem as inappropriate in an anthropology journal as these lawyers' performances strike anthropologists as strange. In a more general sense, the starting premise of the ethnographic project seems absent: There is no immediately apparent lack of knowledge of the subject and no self-evident gap in the knowledge base for ethnography to fill. These ethnographic subjects are not unknown others but familiar fellow travelers whose practices remain nevertheless ethnographically inaccessible, uninteresting, and, at times, infuriating.

But perhaps failure is the only possible response to the hegemony of instrumentalism (Miyazaki and Riles 2005). To see how circling back is neither a replication nor an extension of the indigenous point of view nor a position that claims to be "outside" the subjects' own knowledge practices, let me close by contrasting the temporality of circling back as ethnographic practice to the temporal orientation of legal knowledge.

As I have argued elsewhere (Riles in press), human rights knowledge has what I call a "temporality of projects." What I mean is that it is understood by its practitioners to occupy particular discrete segments of time, segments in which discrete projects are undertaken and then come to an end. At present, for example, human rights lawyers are debating strategies and approaches for holding occupying powers to certain human rights standards regarding torture. Torture under conditions of occupation is the problem of this moment, and the moment is defined by the problem. But at some point, it is expected that the problem will come to be replaced by other more pressing problems and associated projects. This helps to make sense of the joke implicit in the "Fin de NAIL" label—that is, the positioning of NAIL as a project already finished, in the way legal projects routinely come to be finished.

The temporality of circling back in contrast borrows from a conventional anthropological understanding of the way questions periodically return fresh or linger in the background to be picked up again. Although ethnography in the modality of circling back works the same "ground" as legal knowledge (anthropological knowledge is already entirely commingled with the ethnographic subject), circling back serves as a counterpart to the forward-looking but ultimately periodically limited temporality of human rights projects. Circling back does not produce new knowledge of a foreign object, new solutions, or even revisit old knowledge from a new perspective. Rather, in contrast to the forward-looking temporality of projects, the ethnographer in the modality of circling back commits to standing in two temporal places at once—past and present—and hence to the pull of the past into the present (Miyazaki 2004).

In this article, I show how because of the legal character of human rights, in which instrumentalism is the hegemonic knowledge form, ethnographic description (of human rights as culture) is already a legal instrument. I show, in other words, how under certain conditions ethnographic description transmogrifies into its subject. The question, then, is what ethnography under such conditions might become. One of the emerging features of some current ethnographic work in human rights is an empathy for and

responsiveness to human rights actors' own efforts to guard against claims of ethical purity, and an effort to respond in kind, with an ethical commitment to hold back and to protect the ethnographic subject from attempts by the various constituencies for the ethnographic text to instrumentalize it in turn (Jean-Klein and Riles 2005; Redfield 2005b; Rosga 2005a, 2005b). My point has been that where ethnographic description is already absorbed into the hegemonic form of its subject, this ethical commitment demands that ethnography become something other than description and cultural analysis. I intend this project of circling back as one attempt in this direction.

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NOTES

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1. This article was published in *Political and Legal Anthropology Review* under my editorship, although I did not play a role in shaping the argument.

2. AnnJanette Rosga offers another example. She recounts her attempts to "contextualize" the social scientific study her informants had asked her to produce by revealing in the final report the social process of its making, and the social, political, and economic difficulties encountered along the way (Rosga 2005c). Rosga's informants respond to a draft of her report with annoyance and distress. She concludes by asking, "Do anthropological moves to 'reveal' constructedness pull the rug out from beneath human rights actors who assume constructedness but who feel the need to present more "transparent" findings in order to get funding?" (Rosga 2005c).

3. The anthropology of human rights has tended to reproduce methodologically the human rights community's own divide between human rights institutions and actors, on the one hand, and the clients of human rights institutions, on the other hand. My discussion here is limited to the anthropology of human rights professionals, rather than their clients. There is, however, now a considerable body of new and challenging ethnographic work on the clients of human rights organizations (e.g., Coxshall 2005; Jean-Klein 2003).

4. Human rights institutions even seem to anticipate the ethnographer's arrival. Rosga recounts how her NGO subjects enlist her services as a researcher in producing a sociological study (Rosga 2005c; see also Dahl 2004). The ethnographer arrives on the scene, in other words, to discover that the subjects claim that the anthropologist's work—the work of producing cultural description—is already indigenously done. And to add insult to irony, some subjects, such as the human rights workers who engaged Rosga, are clever enough to get the work already indigenously done by the anthropologist herself. Rosga's ethnographic discovery of how she was immediately slotted into the role of staff researcher is prescient. As I have suggested elsewhere, human rights slots ethnography in: There are gaps in the literal and figurative forms (Riles 2000) of the asylum petition for the expert ethnographic account, and even places in funding proposal for ethnographers to produce accounts of the organizational cultures of human rights administrations and the cultures of those administrations' clients.

Doug Holmes and George Marcus have discussed this condition in terms of the anthropologist's "complicity" with the subject (Holmes and Marcus 2005; see also Maurer 2003), a phrasing that usefully foregrounds the necessity of refusing claims to ethical purity and neutrality in such ethnography. I have recently described this condition as a question of collaboration and collegiality, in which the relationship with the ethnographic subject becomes a model for the relationship with the academic colleague and vice versa (Riles in press). But I like Rosga's formulation: "We're just driving along, side by side, in the next lane" (Rosga, conversation with author, April 10, 2005).

5. For his part, Borneman takes Parker to task for his "postcolonial" academic sensibility (Borneman 2003a:50).

6. For example, the celebrated early-20th-century modernist legal thinker Roscoe Pound argued that

> being scientific as a means to an end, [law] must be judged by the results it achieves, not the niceties of internal structure; it must be valued by the extent to which it meets its end, not by the beauty of its logical processes or the strictness with which its rules proceed from the dogmas it takes as its foundation. [Pound 1908:605]

7. In *An Anthropology of the Subject,* Roy Wagner makes the following observation about what we might take as one archetypal instrument, the wheel. The wheel, in Wagner's description, is "the image of the work it does, a technological 'interpretation' of gravity whose very simplicity conceals the gravitic reinterpretation within its operation" (Wagner 2001:191). Wagner demonstrates that all descriptions of a wheel

> do not explain the wheel at all but are instead explained by it. An "explanation" that worked as well as the wheel did, underdetermined its own means with a like pragmatic acuity, could probably be used in its place. That would be a reinvention of the wheel. [2001:192]

It is impossible adequately to describe the wheel without reinventing the wheel in other words. The better the description, the more it becomes what it describes. The fuller and more adequate the ethnographic account of the instrument, the more it becomes an instrument, and becomes instrumentalized, itself.

REFERENCES CITED

Abu-Lughod, Lila
2002 Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and its Others. American Anthropologist 104(3):783–790.

American Anthropological Association
1947 Statement on Human Rights Submitted to the Commission on Human Rights, United Nations. American Anthropologist 49(4):1–4.
1999 Proposed Declaration on Anthropology and Human Rights. Electronic document, http://www.aaanet.org/stmts/humanrts.htm, accessed April 26, 2005.

Anghie, Antony
1996 Francisco deVitoria and the Colonial Origins of International Law. Social and Legal Studies 5(3):321–336.

Borneman, John
2003a Rejoinder. Political and Legal Anthropology Review 26(1):49–54.
2003b Responsibility after Military Intervention: What is Regime Change? Political and Legal Anthropology Review 26(1):29–42.

Coxshall, Wendy
2005 From the Peruvian Reconciliation Commission to Ethnography: Narrative, Relatedness, and Silence. Political and Legal Anthropology Review 28(2):203–222.

Dahl, Ulrika
2004 Social Science Seen Twice: Knowledge as "Activism." Paper presented at the workshop "Anthropology of Human Rights Administrations: Expert Observation and Representation after the Fact," New York, April 9.

Engle, Karen
1992a Female Subjects of Public International Law: Human

Rights and the Exotic Other Female. New England Law Review 26:1509–1526.
1992b International Human Rights and Feminism: When Discourses Meet. Michigan Journal of International Law 13:517.
2001 From Skepticism to Embrace: Human Rights and the American Anthropological Association from 1947–1999. Human Rights Quarterly 23:536–559.

Halley, Janet
2004 Take a Break from Feminism? *In* Gender and Human Rights. K. Knop, ed. Pp. 57–81. Oxford: Oxford University Press.

Holmes, Douglas R.
2000 Integral Europe: Fast-Capitalism, Multiculturalism, Neofascism. Princeton: Princeton University Press.

Holmes, Douglas R., and George E. Marcus
2005 Cultures of Expertise and the Management of Globalization: Toward the Refunctioning of Ethnography. *In* Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems. A. Ong and S. J. Collier, eds. Pp. 235–252. Oxford: Blackwell.

Jean-Klein, Iris
2003 Into Committees, out of the House? Familiar Forms in the Organization of Palestinian Committee Activism during the First Intifada. American Ethnologist 30(4):556–577.

Jean-Klein, Iris, and Annelise Riles
2005 Introducing Discipline: Anthropology and Human Rights Administrations. Political and Legal Anthropology Review 28(2):173–202.

Kapur, Ratna
2002 The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics. Harvard Human Rights Journal 15:1–37.

Kennedy, David
2004 The Dark Sides of Virtue: Reassessing International Humanitarianism. Princeton: Princeton University Press.

Koskenniemi, Martti
2002 The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960. Cambridge: Cambridge University Press.

Latour, Bruno
2004 Why has Critique Run out of Steam? From Matters of Fact to Matters of Concern. Critical Inquiry 30:225–248.

Mamdani, Mahmood
2001 When Victims Become Killers: Colonialism, Nativism and Genocide in Rwanda. Princeton: Princeton University Press.

Maurer, Bill
2003 Please Destabilize Ethnography Now: Against Anthropological Show-Biz as Usual. Reviews in Anthropology 32:159–169.

Merry, Sally Engle
2003 Human Rights Law and the Demonization of Culture (and Anthropology along the Way). Political and Legal Anthropology Review 26(1):55–76.
2005 Human Rights and Gender Violence: Translating International Law into Local Justice. Chicago: University of Chicago Press.

Miyazaki, Hirokazu
2004 The Method of Hope: Anthropology, Philosophy, and Fijian Knowledge. Stanford: Stanford University Press.

Miyazaki, Hirokazu, and Annelise Riles
2005 Failure as an Endpoint. *In* Global Assemblages: Technology, Politics and Ethics as Anthropological Problems. A. Ong and S. Collier, eds. Pp. 320–331. Malden, MA: Blackwell.

Mutua, Makau
2002 Human Rights: A Political and Cultural Critique. Philadelphia: University of Pennsylvania Press.

Nader, Laura
2002[1969] Up the Anthropologist—Perspectives Gained from Studying Up. *In* Reinventing Anthropology. D. Hymes, ed. Pp. 284–311. Ann Arbor: University of Michigan Press.

Nelson, Diane
1999 A Finger in the Wound: Body Politics in Quincentennial Guatemala. Berkeley: University of California Press.

Parker, Kunal
2003 History, Law and Regime Change. Political and Legal Anthropology Review 26(1):43–48.

Pound, Roscoe
1908 Mechanical Jurisprudence. Columbia Law Review 8:605–623.

Rajagopal, Balakrishnan
2003 International Law from Below: Development, Social Movements and Third World Resistance. Cambridge: Cambridge University Press.

Redfield, Peter
2005a Against Sacrifice: The Residual Hope of Humanitarian Action. Paper presented at the Annual Meeting of the American Ethnological Society, San Diego, CA, April 10.
2005b Doctors, Borders, and Life in Crisis. Cultural Anthropology 20(3):328–361.

Riles, Annelise
2000 The Network Inside Out. Ann Arbor: University of Michigan Press.
2001 Encountering Amateurism: John Henry Wigmore and the Uses of American Formalism. *In* Rethinking the Masters of Comparative Law. A. Riles, ed. Pp. 94–128. Oxford: Hart.
2002 The Virtual Sociality of Rights: The Case of "Women's Rights Are Human Rights." *In* Transnational Legal Processes. M. Likosky, ed. Pp. 420–439. Cambridge: Cambridge University Press.
2004b Property as Legal Knowledge: Means and Ends. Journal of the Royal Anthropological Institute (n.s.) 10:775–795.
In press [Deadlines]. *In* Documents: Artifacts of Modern Knowledge. A. Riles, ed. Ann Arbor: University of Michigan Press.

Rosga, AnnJanette
2005a The Shalom Babies (Anti-?)Trafficking Ring. Paper presented at the Annual Meeting of the American Ethnological Society, San Diego, CA, April 10.
2005b Transparency and Accountability: Trafficking in the Rule of Law. Paper presented in Anthropology of Sexuality Series, Cornell Law School, February 7, 2005.
2005c The Traffic in Children: The Funding of Translation and the Translation of Funding. Political and Legal Anthropology Review 28(2):258–281.

Skouteris, Thomas
1997 Fin de NAIL: New Approaches to International Law and Its Impact on Contemporary International Legal Scholarship. Leiden Journal of International Law 10:415–420.

Valverde, Mariana
2003 Law's Dream of a Common Knowledge. Princeton: Princeton University Press.

Wagner, Roy
2001 An Anthropology of the Subject: Holographic Worldview in New Guinea and Its Meaning and Significance for the World of Anthropology. Berkeley: University of California Press.

Wilson, Richard
1997 Human Rights, Culture and Context: Anthropological Perspectives. London: Pluto Press.
2001 The Politics of Truth and Reconciliation in South Africa. Cambridge: Cambridge University Press.